

Appl. No. 10/084,098
Reply to Office action of June 11, 2003

REMARKS/ARGUMENTS

As a result of this Amendment, claims 2 and 6 are under active consideration in the subject patent application.

In the Official Action, the Examiner has:

- (1) acknowledged Applicant's election without traverse;
- (2) objected to the drawings under 37 CFR 1.84(p)(5) and required proposed corrections filed with the Response to the Official Action;
- (3) rejected claim 2 under 35 U.S.C. §112, second paragraph;
- (4) rejected claim 2 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,318,611 B1, issued to Alexander;
- (5) rejected claim 6 under 35 U.S.C. §103(a) over a proposed combination of U.S. Patent No. 6,318,611 B1, issued to Alexander with U.S. Patent No. 4,600,238, Issued to Goodford; and
- (6) identified prior art made of record and not relied upon but considered pertinent to Applicant's disclosure.

With regard to Item 1, no comment appears to be necessary.

With regard to Item 2, Applicant has amended Figs. 10 and 11 to include reference numeral --85-- that identifies an enlarged tube attached to one side of the back portion of the seat. Support for this change to the drawings may be found at least at page 15, lines 12-13 of the specification. No new matter has been added to the drawings as a result of this correction to the inadvertent typographical error identified by the Examiner. As required by the Examiner, attached to this Responsive Amendment is a drawing sheet presenting the foregoing changes to Figs. 10 and 11 for entry into the application. Accordingly, reconsideration and withdrawal of the

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Examiner's objection to the drawings under 37 CFR 1.84(p)(5) are respectfully requested.

With regard to Item 3, Applicant has amended claim 2 so as to more distinctly define and particularly point out the subject matter regarded by Applicant as his invention. More particularly, Applicant has amended claim 2 to include -- at least one side edge -- which now provides the antecedent required by the Examiner in line 5 of the claim. Reconsideration and withdrawal of the Examiner's rejection under 35 U.S.C. §112, second paragraph, are requested.

With regard to Item 4, Applicant respectfully submits that U.S. Patent No. 6,318,611 B1, issued to Alexander, is not valid prior art under 35 U.S.C. §102(e), or for that matter, under any other portion of 35 U.S.C. §102. Reconsideration is therefore requested for the following reasons. 35 U.S.C. §102(e) states:

" . . . A person shall be entitled to a patent unless: . . . (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language. . . . "

Thus in order for a prior art reference to be considered a valid §102(e) reference, it must be either "*. . . an application for patent, . . . by another filed in the United States before the invention by the applicant for patent. . .*", or "*. . . a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent . . .*" Applicant respectfully submits that he is David P. Alexander, the inventor named in U.S. Patent No. 6,318,611 B1. Accordingly, U.S. Patent No. 6,318,611 B1, fails to meet the requirements of 35

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U.S.C. §102(e) since it is neither *an application for patent*, ... by another, nor is it a *patent granted on an application for patent by another*. Referring to MPEP §706.02(f), subtitled, Rejection Under 35 U.S.C. 102(e):

"35 U.S.C. 102(e), in part, allows for certain prior art (i.e., U.S. patents, U.S. patent application publications and WIPO publications of international applications) to be applied against the claims as of its effective U.S. filing date. This provision of 35 U.S.C. 102 is mostly utilized when the publication or issue date is too recent for the reference to be applied under 35 U.S.C. 102(a) or (b). In order to apply a reference under 35 U.S.C. 102(e), the inventive entity of the application must be different than that of the reference. Note that, where there are joint inventors, only one inventor need be different for the inventive entities to be different and a rejection under 35 U.S.C. 102(e) is applicable even if there are some inventors in common between the application and the reference." [Emphasis added]

U.S. Patent No. 6,318,611 B1, issued to David P. Alexander, was granted as a patent on November 20, 2001. The invention defined by claims 2 and 6 was conceived by David P. Alexander prior to November 20, 2001. The present application of David P. Alexander was filed on February 27, 2002, less than one (1) after the grant and publication of U.S. Patent No. 6,318,611 B1. Thus it cannot be said that U.S. Patent No. 6,318,611 B1 meets the requirements of 35 U.S.C. §102(a) or 35 U.S.C. §102(b) and is therefore invalid as a reference under 35 U.S.C. §102. Claims 2 and 6 are patentable over U.S. Patent No. 6,318,611 B1.

Attached to this Responsive Amendment is the Affidavit of David P. Alexander affirming his common ownership of, and inventorship in, the subject matter of claims 2 and 6 and U.S. Patent No. 6,318,611 B1. As such, claims 2 and 6 are patentable over U.S. Patent No. 6,318,611 B1 under 35 U.S.C. §102(e).

Accordingly, Applicant respectfully requests the withdrawal of the Examiner's rejection under 35 U.S.C. §102(e).

With regard to Item 5, for all of the foregoing reasons the Examiner's rejection of claim 6 under 35 U.S.C. §103(a) over a proposed combination of U.S. Patent No.

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6,318,611 B1, issued to Alexander with U.S. Patent No. 4,600,238, issued to Goodford is also invalid since it relies upon the Alexander reference which is not prior art to claim 6. As the Examiner has implicitly admitted, Goodford alone does not teach or suggest the subject matter defined by claims 2 and 6. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the Examiner's rejection of claim 6 under 35 U.S.C. §103.

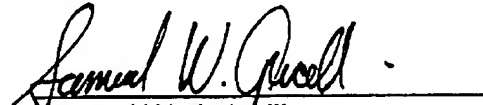
With regard to Item 6, Applicant has reviewed the additional prior art references identified by the Examiner in the Official Action, but not relied upon in making the rejections of claims 2 and 6. None of these references, whether taken alone, or in any valid combination with Goodford, teaches or suggests Applicant's invention as defined by claims 2 and 6.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

If a telephone conference would be of assistance in advancing prosecution of the above-identified application, Applicant's undersigned Attorney invites the Examiner to telephone him at 717-237-5516.

Date: 9/4/03

Respectfully Submitted,



Samuel W. Apicelli

Registration No. 36,427

Customer No. 08933

DUANE MORRIS LLP

305 North Front Street, P.O. Box 1003

Harrisburg, PA 17108-1003

(717) 237-5516

swapicelli@duanemorris.com